

# Union Calendar No. 589

114TH CONGRESS  
2D SESSION

# H. R. 2319

[Report No. 114-757]

To amend title 44, United States Code, to require preservation of certain electronic records by Federal agencies, to require a certification and reports relating to Presidential records, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 14, 2015

Mr. CUMMINGS introduced the following bill; which was referred to the Committee on Oversight and Government Reform

SEPTEMBER 19, 2016

Additional sponsor: Ms. DUCKWORTH

SEPTEMBER 19, 2016

Committed to the Committee of the Whole House on the State of the Union  
and ordered to be printed

# A BILL

To amend title 44, United States Code, to require preservation of certain electronic records by Federal agencies, to require a certification and reports relating to Presidential records, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Electronic Message  
5 Preservation Act of 2015”.

6 **SECTION 2. PRESERVATION OF ELECTRONIC MESSAGES**

7                   **AND OTHER RECORDS.**

8       (a) REQUIREMENT FOR PRESERVATION OF ELEC-  
9 TRONIC MESSAGES.—Chapter 29 of title 44, United  
10 States Code is amended by adding at the end the following  
11 new section:

12 **“§ 2912. Preservation of electronic messages and**  
13 **other records**

14       “(a) REGULATIONS REQUIRED.—Not later than 120  
15 days after the date of the enactment of this section, the  
16 Archivist shall promulgate regulations governing Federal  
17 agency preservation of electronic messages that are deter-  
18 mined to be records (as such term is defined under section  
19 3301 of this title). Such regulations shall, at a min-  
20 imum—

21               “(1) require the electronic capture, manage-  
22 ment, and preservation of such electronic records in  
23 accordance with the records disposition requirements  
24 of chapter 33 of this title;

1               “(2) require that such electronic records are  
2               readily accessible for retrieval through electronic  
3               searches; and

4               “(3) include timelines for Federal agency com-  
5               pliance with the regulations that ensure compliance  
6               as expeditiously as practicable but not later than  
7               December 31, 2016.

8               “(b) ENSURING COMPLIANCE.—Not later than 2  
9               years after the date of the enactment of this section, the  
10              Archivist shall promulgate regulations that—

11              “(1) establish mandatory minimum functional  
12              requirements for electronic records management sys-  
13              tems to ensure compliance with the requirements in  
14              paragraphs (1) and (2) of subsection (a); and

15              “(2) establish a process to ensure that Federal  
16              agencies’ electronic records management systems  
17              meet the functional requirements established under  
18              paragraph (1).

19              “(c) COVERAGE OF OTHER ELECTRONIC  
20              RECORDS.—To the extent practicable, the regulations pro-  
21              mulgated under subsections (a) and (b) shall also include  
22              requirements for the capture, management, and preserva-  
23              tion of other electronic records.

1       “(d) COMPLIANCE BY FEDERAL AGENCIES.—Each  
2 Federal agency shall comply with the regulations promul-  
3 gated under subsections (a) and (b).

4       “(e) REVIEW OF REGULATIONS REQUIRED.—The Ar-  
5 chivist shall periodically review and, as necessary, amend  
6 the regulations promulgated under subsections (a) and  
7 (b).

8       “(f) REPORTS ON IMPLEMENTATION OF REGULA-  
9 TIONS.—

10       “(1) AGENCY REPORT TO ARCHIVIST.—Not  
11 later than December 31, 2017, the head of each  
12 Federal agency shall submit to the Archivist a report  
13 on the agency’s compliance with the regulations pro-  
14 mulgated under this section and shall make the re-  
15 port publicly available on the website of the agency.

16       “(2) ARCHIVIST REPORT TO CONGRESS.—Not  
17 later than 90 days after receipt of all reports re-  
18 quired by paragraph (1), the Archivist shall submit  
19 to the Committee on Homeland Security and Gov-  
20 ernmental Affairs of the Senate and the Committee  
21 on Oversight and Government Reform of the House  
22 of Representatives a report on Federal agency com-  
23 pliance with the regulations promulgated under sub-  
24 section (a) and shall make the report publicly avail-  
25 able on the website of the agency.”.

1       (b) CLERICAL AMENDMENT.—The table of sections  
2 at the beginning of chapter 29 of title 44, United States  
3 Code, is amended by adding after the item relating to sec-  
4 tion 2911 the following new item:

“2912. Preservation of electronic messages and other records.”.

5       (c) DEFINITIONS.—Section 2901 of title 44, United  
6 States Code, is amended—

7               (1) by striking “and” at the end of paragraph  
8 (14); and

9               (2) by striking paragraph (15) and inserting  
10 the following new paragraphs:

11               “(15) the term ‘electronic messages’ means  
12 electronic mail and other electronic messaging sys-  
13 tems that are used for purposes of communicating  
14 between individuals; and

15               “(16) the term ‘electronic records management  
16 system’ means software designed to manage elec-  
17 tronic records, including by—

18                       “(A) categorizing and locating records;

19                       “(B) ensuring that records are retained as  
20 long as necessary;

21                       “(C) identifying records that are due for  
22 disposition; and

23                       “(D) ensuring the storage, retrieval, and  
24 disposition of records.”.

1   **SEC. 3. PRESIDENTIAL RECORDS.**

2           (a) ADDITIONAL REGULATIONS RELATING TO PRESI-

3   DENTIAL RECORDS.—

4           (1) IN GENERAL.—Section 2206 of title 44,

5         United States Code, is amended—

6               (A) by striking “and” at the end of para-

7         graph (3);

8               (B) by striking the period at the end of

9         paragraph (4) and inserting “; and”; and

10              (C) by adding at the end the following:

11               “(5) provisions for establishing standards nec-

12         essary for the economical and efficient management

13         of electronic Presidential records during the Presi-

14         dent’s term of office, including—

15               “(A) records management controls nec-

16         essary for the capture, management, and pres-

17         ervation of electronic messages;

18               “(B) records management controls nec-

19         essary to ensure that electronic messages are

20         readily accessible for retrieval through elec-

21         tronic searches; and

22               “(C) a process to ensure the electronic

23         records management system to be used by the

24         President for the purposes of complying with

25         the requirements in subparagraphs (A) and

26         (B).”.

1                             (2) DEFINITIONS.—Section 2201 of title 44,  
2                             United States Code, is amended by adding at the  
3                             end the following new paragraphs:

4                             “(6) The term ‘electronic messages’ has the  
5                             meaning given that term under section 2901(15) of  
6                             this title.

7                             “(7) The term ‘electronic records management  
8                             system’ has the meaning given that term under sec-  
9                             tion 2901(16) of this title.”.

10                             (b) CERTIFICATION OF PRESIDENT’S MANAGEMENT  
11                             OF PRESIDENTIAL RECORDS.—

12                             (1) CERTIFICATION REQUIRED.—Chapter 22 of  
13                             title 44, United States Code, is amended by adding  
14                             at the end the following new section:

15                             **“§ 2210. Certification of the President’s management  
16                             of Presidential records”**

17                             “(a) ANNUAL CERTIFICATION.—The Archivist shall  
18                             annually certify whether the electronic records manage-  
19                             ment controls established by the President meet require-  
20                             ments under sections 2203(a) and 2206(5) of this title.

21                             “(b) REPORT TO CONGRESS.—The Archivist shall re-  
22                             port annually to the Committee on Homeland Security and  
23                             Governmental Affairs of the Senate and the Committee  
24                             on Oversight and Government Reform of the House of  
25                             Representatives on the status of the certification.”.

1                             (2) CLERICAL AMENDMENT.—The table of sec-  
2         tions at the beginning of chapter 22 of title 44,  
3         United States Code, is amended by adding at the  
4         end the following new item:

“2210. Certification of the President’s management of Presidential records.”.

5                             (c) REPORT TO CONGRESS.—Section 2203(g) of title  
6 44, United States Code, is amended by adding at the end  
7 the following:

8                             “(4) One year following the conclusion of a Presi-  
9 dent’s term of office, or if a President serves consecutive  
10 terms one year following the conclusion of the last term,  
11 the Archivist shall submit to the Committee on Homeland  
12 Security and Governmental Affairs of the Senate and the  
13 Committee on Oversight and Government Reform of the  
14 House of Representatives a report on—

15                             “(A) the volume and format of electronic Presi-  
16         dential records deposited into that President’s Presi-  
17         dential archival depository; and

18                             “(B) whether the electronic records manage-  
19         ment controls of that President met the require-  
20         ments under sections 2203(a) and 2206(5) of this  
21         title.”.

22                             (d) EFFECTIVE DATE.—The amendments made by  
23 this section shall take effect one year after the date of  
24 the enactment of this Act.

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